

DEC 22 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
10/039,292	01/03/2002	Thomas Edward Cezeaux	2005P12932US

Response To Official Action

EXAMINER
Hoye, Michael W.

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REMARKS

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 39, 46, 50, and 51 has been amended for at least one reason unrelated to patentability, including at least one of: to correct an informality; to explicitly present one or more limitations, phrases, words, terms, and/or elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 39-58 are now pending in this application. Each of claims 39, 46, and 51 are in independent form.

I. Consideration of Submitted References is Requested

On 8 April 2002, an Information Disclosure Statement and PTO Form 1449 listing and providing four references was submitted. It is respectfully requested that those references be expressly considered during the prosecution of this application, that the references be made of record therein, and appear in the "References Cited" section of any patent to issue therefrom. It is respectfully requested that the next communication from the USPTO include a copy of the Form 1449 with the Examiner's initials beside each listed reference.

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II. The Anticipation Rejections

Each of claims 51, 52, and 54 was rejected as anticipated under 35 U.S.C. 102(e). In support of the rejection, various portions of U.S. Patent No. 6,154,771 ("Rangan") were applied. These rejections are respectfully traversed.

Applicant respectfully submits that the grounds of rejection of claim 51 are moot in view of the current amendments to claim 51. Specifically, claim 51 states, *inter alia*, yet none of the applied portions of the relied upon references teaches "the profile information comprising user specified filtering criteria, the user specified filtering criteria adapted to cause an interactive program guide to be displayed with user-identified information filtered out".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 51 is respectfully requested. A reconsideration and withdrawal of each rejection of claims 52 and 54, each ultimately depending from claim 51, is also respectfully requested.

III. The Obviousness Rejections

Each of claims 39-50, 53, and 55-58 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of U.S. Patent No. 6,154,771 ("Rangan"), U.S. Patent Application Publication No. 2002/0059629 ("Markel"), U.S. Patent No. 6,637,032 ("Feinleib"), U.S. Patent No. 6,560,777 ("Blacketter"). Each of these rejections is respectfully traversed.

Regarding Official Notice, MPEP § 2144.03.A states (emphasis added):

[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of **instant and unquestionable demonstration as being well-known**. For example, assertions of... specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979).

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Further, if an applicant traverses an assertion of Official Notice, the USPTO must provide documentary evidence in the next Office Action if the rejection is to be maintained. See 37 CFR 1.104(c)(2) and MPEP 2144.03C. See also *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) ("[T]he Board cannot simply reach conclusions based on its own understanding or experience, or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.").

A bald assertion of knowledge generally available to one of ordinary skill in the art to bridge the evidentiary gap is improper. Such unfounded assertions are not permissible substitutes for evidence. See *In re Lee*, 277 F.3d 1338, 1435, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). That is, deficiencies of the cited references can not be remedied by general conclusions about what is basic knowledge or common sense to one of ordinary skill in the art. *In re Zurko*, 258 F.3d 1379, 1385-86 (Fed. Cir. 2001). An assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.*

Thus, to the extent that Official Notice is explicitly or implicitly utilized to support any rejection, such as the Official Notice taken regarding the rejection of each of claims 41, 53, and 57, each such rejection is respectfully traversed and citation and provision of a reference that supports the rejection is respectfully requested.

Applicant respectfully traverses each rejection of claims 39-50, 53, and 55-58 as moot in view of the current amendments to each of independent claims 39, 46, and 51. Specifically, each of independent claims 39, 46, and 51 states, *inter alia*, yet none of the applied portions of the relied upon references teach, "the profile information comprising user specified filtering criteria, the user specified filtering criteria adapted to cause an interactive program guide to be displayed with user-identified information filtered out".

For at least these reasons a reconsideration and withdrawal of each rejection of each of claims 39, 46, and 51 is respectfully requested. Also a reconsideration and withdrawal of each

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rejection of each of claims 40-45, 47-50, 53, and 55-58; each of which ultimately depends upon one of claims 39, 46, and 51; is also respectfully requested.

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are in proper format and are patentably distinct from the prior art of record and are in condition for allowance.

The Examiner is invited to contact the undersigned at the telephone number listed below with any questions concerning this application.

Respectfully submitted,



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